IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.650 OF 2005

Shri.Ganpat Govindrao Salunkhe ..Petitioner.

V/s.

Shri. Balasaheb Dhondiram Nikam & Anr. ..Respondents.

Shri.V.S. Talkute for the petitioner.
Shri.V.P. Patil for respondent No.1.
Mrs. S.P. Shinde APP for State.

CORAM : V.M. KANADE, J

DATED : 03/08/2006

P.C.:-

1. Heard learned counsel appearing on behalf of the petitioner and learned advocate appearing on behalf of respondent.

2. Petitioner is the original complainant who is challenging the order passed by the Sessions Court whereby order of issuance by the Magistrate on complaint filed by the petitioner U/s.500 of Indian Penal Code was set aside and the respondent was discharged.

3. Complaint was filed by the respondent before competent authority alleging that the petitioner was disqualified to continue as director of the Society in view of the provisions of Sec.73 f(1)((b). Pursuant to

the said complaint, inquiry was made by the competent authority. Therefore, the present petitioner filed complaint against the respondent before Judicial Magistrate, Satara, alleging that by filing a false complaint, respondent had defamed the petitioner.

4. The Magistrate issued process which was challenged by the respondent in the Sessions Court. Sessions Court, after examining material which was on record, held that the said complaint fell within the 8th exception to 499 of IPC and, therefore, respondent had not committed an offence and, therefore, process which was issued against the respondent was set aside and he was discharged.

5. The learned counsel for the petitioner submits that apart from respondent filing complaint against the present petition before the competent authority, petitioner has also sent the letters to various other banks. He submitted that, therefore, this act clearly amounts to defamation. He submitted that the question as to whether complaint filed had been pending or not could have been gone into by the trial court after evidence is led. He submitted that, therefore, the

Sessions Court was not justified in discharging the accused.

6. Learned counsel for the respondents on the other hand submitted that petitioner had averred that the pursuant to the complaint which is filed by the respondent, competent authority had issued notice under under Section 78 of Maharashtra Co-operative Societies Act and had, therefore sent copy of the letter which was sent by the respondent to all the concerned banks. He submitted that therefore submission of the counsel for the petitioner that the petitioner had sent these letters was incorrect.

7. In the present case, it is an admitted position that District Deputy Registrar of Co-operative Societies, Satara was authorized to deal with the complaint which was filed against the Managing Committee. Respondents had alleged that the petitioner was defaulter and therefore, was disqualified within the meaning of Section 73 f(1)((b). In view of the complaint an inquiry was made and thereafter, further proceeding was initiated Section 78 of Maharashtra Co-operative Societies Act. It is also an admitted position that

any complaint or affidavit which is filed by party before competent authority falls within the 8th exception to 499 of IPC and therefore in such case it can not be stated that accused has committed offence within the four corner of Section 499 and 500 of IPC.

8. In the present case on the basis of documentary evidence which is on record Sessions Court came to the conclusion that case clearly fell within the 8th exception to 499 of IPC. Sessions Court has observed that it was not necessary to continue unwarranted litigation and the continuation of trial, therefore was unwarranted. View taken by the Sessions court is a plausible view. Sessions Court has made this observation after going through the documentary evidence and material which is on record. Under these circumstances it is not necessary that evidence should be led for the purpose of proving case of the respondent. Therefore, in my view, there is no reason to interfere with the order passed by the Sessions Court. Petition is, accordingly, rejected.

V.M. KANADE, J.